WT 12-332

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Federal Communications Commission
Office of the Secretary

Exhibit 1
FCC Form 601

I. INTRODUCTION

MetroPCS 700 MHz, LLC ("MetroPCS 700"), a wholly-owned indirect subsidiary of MetroPCS Communications, Inc. ("MetroPCS Communications" and, together with MetroPCS 700, "MetroPCS"), is seeking a three-year extension or waiver of the interim build-out deadline set forth in Section 27.14(g)(1) of the rules and regulations of the Federal Communications Commission (the "FCC" or "Commission") as applied to its lower 700 MHz Block A license under the call sign WQIZ578[1] (the "MetroPCS License") serving the Boston-Worcester-Lawrence-Lowell-Brockton, MA-NH-RI-VT Economic Area (BEA003) (the "Market"). The Market consists of the twenty-nine counties throughout Massachusetts, New Hampshire, Rhode Island and Vermont, which collectively encompass 18,728 square miles. In the absence of the requested relief, MetroPCS would be obligated to construct and provide signal coverage and offer service over at least 35 percent of the geographic area of the Market by no later than June 13, 2013, or have its license term reduced by two years and, possibly, be subject to enforcement action, including forfeitures, and/or lose authority to serve some or all of the Market.[2]

As is set forth in greater detail below, the requested relief is appropriate and justified because (a) circumstances beyond MetroPCS' reasonable control prevent MetroPCS from meeting the construction deadline; (b) the underlying purpose of the construction rule would not be served, and actually would be frustrated, by the failure to grant the requested relief; (c) unique or unusual factual circumstances, which have arisen since MetroPCS acquired the MetroPCS

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[1] *See* 47 C.F.R. § 27.14(g)(1).

[2] *See* 47 C.F.R. § 27.14(g)(2). As noted herein, MetroPCS has taken significant actions in an effort to proceed with the construction of the MetroPCS Station. MetroPCS believes, therefore, that it has met the "meaningful efforts" test the Commission has indicated carriers must meet to avoid sanctions in addition to the foreshortened license term. If the Commission disagrees, MetroPCS also requests a waiver of the meaningful efforts standard for the same reasons that it seeks relief from the construction deadline of 27.14(g)(1) of the Commission's Rules.

License, would make the strict application of the construction deadline inequitable, unduly burdensome and contrary to the public interest; and (d) MetroPCS has no reasonable alternative to seeking a waiver. MetroPCS seeks an extension of the interim June 13, 2013 construction deadline to the later of June 13, 2016 or two years after the Commission concludes its rulemaking proceeding regarding interoperability in the Lower 700 MHz Band.[3]

II. STATEMENT OF PERTINENT FACTS

MetroPCS provides mobile wireless voice and broadband data service in selected major metropolitan areas in the United States and, as of June 30, 2012, serves more than 9.3 million subscribers, making it the fifth-largest facilities based mobile broadband wireless carrier in the United States, based on number of subscribers served. MetroPCS provides its services using code division multiple access ("CDMA"), evolution-data optimized ("EVDO") and long term evolution ("LTE") air interfaces. MetroPCS has historically targeted a mass market largely underserved by the larger national mobile broadband wireless providers. MetroPCS' service plans are differentiated from the more complex long-term plans offered by many of its competitors by being more affordable, predictable and flexible. MetroPCS' service plans currently begin at $25 per month for unlimited voice and text on a nationwide basis and $40 per month for voice, text and data on a nationwide basis, including all applicable taxes and regulatory fees. Customers pay for service in advance, on a no long-term contract basis.

MetroPCS Communications is a relative newcomer to the wireless industry, having launched voice and text service in 2002 in Miami, Atlanta, San Francisco and Sacramento, entering an industry consisting of long-established providers with large pre-existing customer

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[3] *Promoting Interoperability in the 700 MHz Commercial Spectrum*, Notice of Proposed Rulemaking, WT Docket No. 12-69 (rel. Mar. 21, 2013).

bases. Over time, MetroPCS acquired additional licenses via FCC auction or private transactions. In 2004, MetroPCS acquired spectrum Tampa; in 2005, MetroPCS acquired licenses in Dallas and Detroit; in 2006, MetroPCS acquired licenses in a number of additional major metropolitan areas, including Las Vegas, New York City, Philadelphia and Boston. In 2005, MetroPCS also invested in a company that acquired licenses in Los Angles and Orlando and, in 2010, MetroPCS acquired the remaining interests in that company. MetroPCS' networks currently cover approximately 101 million pops, primarily in major metropolitan areas.

Part and parcel to MetroPCS' success against these entrenched incumbents in the wireless industry – and particularly to its success among un- and under-served consumer populations – has been its demonstrated ability to develop innovative services and rate plans that customers demand or expect. Indeed, MetroPCS pioneered unlimited, "all-you-can-eat" voice, text and, later, data plans that have proven to be enormously popular with customers, and have been replicated in some form by each the largest national carriers. And, MetroPCS was the first U.S. carrier to launch commercial LTE service in September 2010.

As a result of its success, and its spectrum constraints relative to its nationwide competitors, MetroPCS has engaged in substantial efforts to acquire additional wireless spectrum. One of these efforts was to participate in Auction 73, during which it acquired the MetroPCS License at a cost of more than $313 million. Unfortunately for MetroPCS, a series of unexpected intervening circumstances have prevented it from being able to deploy the MetroPCS License to provide additional LTE capacity for its customers as originally anticipated. Although MetroPCS could construct a sub-optimal temporary solution in order to meet the June 13, 2013 construction deadline, forcing the company to expend substantial time and resources in search of an uneconomic solution and diverting those scarce resources away from competing with its larger rivals is contrary to the public interest.

Under the Commission's rules, 700 MHz A Block licensees are required to meet a minimum desired signal-to-undesired signal ("D/U") ratio with respect to proximate full power Class A television stations operating on UHF Channel 51 in order to avoid the potential for harmful interference.[4] In effect, this rule imposes a 60 mile exclusion zone surrounding each Channel 51 station. With specific reference to the MetroPCS License in the Market, this exclusion zone effectively creates insurmountable barriers to deployment in the absence of cooperation from, or agreement, with the Channel 51 licensee. As noted above, the MetroPCS License's geographic area covers 18,728 square miles. Unfortunately, the 60-mile exclusion zone for Providence-based NBC affiliate WJAR, which is owned by Media General and operates over Channel 51 (the "Channel 51 Station"), overlaps 5,591 square miles of this licensed area. This results in a geographic overlap of nearly ***30 percent*** of MetroPCS' licensed territory.[5]

More importantly, this significant geographic overlap also overlays the most densely populated area of the Market, which uniquely impacts MetroPCS' business model. Based on MetroPCS' internal calculations, the Market has a total population of 8,226,944 – and the WJAR service area covers fully **6,471,173** of these Market residents. This means that nearly ***80 percent*** of the population in the Market will be impacted by Channel 51 service issues. Perhaps equally important, the WJAR service area also significantly impacts MetroPCS' ability to provide a

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[4] *See* 47 C.F.R. § 27.60.

[5] Given that the end-of-license-term buildout requirement requires that licensees cover 70 percent of the licensed area, the WJAR's exclusion of 30 percent of the Market's territory calls into serious question whether it even would be feasible for MetroPCS to meet a 70 percent buildout requirement under current conditions. *See* 47 C.F.R. § 27.14(g)(2).

service footprint that complements the coverage provided over its other spectrum bands. This inability to offer service over a common footprint with current MetroPCS service areas prevents MetroPCS from capturing important efficiencies resulting from offering service in common geographies. The Commission adopted stringent performance requirements, including reserving the right to impose a reduction in the size of the licensed area, to ensure that licensees "put this spectrum to use throughout the course of their license terms and serve the majority of users in their license areas."[6] Despite MetroPCS' strong desire to serve customers throughout its licensed area, a review of the map attached hereto as *Attachment 1* reveals that the WJAR 60-mile exclusion zone covers the vast majority of the area currently covered by MetroPCS, highlighting the significant challenges faced by MetroPCS with respect to meaningfully deploying service to the public over this spectrum, especially when MetroPCS needs this spectrum (and the capacity it represents) most in the dense urban areas.

The WJAR exclusion zone particularly impacts MetroPCS' business model, which is focused on un- and under-served customers in the urban core. When MetroPCS deploys service in an area, it begins in the most densely populated, urban core in order to capture the largest possible customer base. Once it has gained a foothold in an area, MetroPCS typically will incrementally build outside of the urban core, in order to support its core operations. However, because the dense urban core of the Market cannot be deployed due to Channel 51 interference issues, it is effectively impossible for MetroPCS to make the business case for deploying that spectrum. This is the case even though MetroPCS currently provides services in the Market. MetroPCS' business model is predicated on being able to use spectrum in an existing urban area

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[6] *Service Rules for the 698-746, 747-762 and 777-792 MHz Bands*, Second Report and Order, 22 FCC Rcd 15289, ¶ 154 (2007).

to defray capital costs. Since the build-out requirements would be difficult, if not impossible, to meet in the urban core, any build-out would have to be on a greenfield basis in less densely populated areas. While MetroPCS' model does contemplate building outside the urban core, the build-out required here would be on a significantly larger and greater scale than would make economic sense. Thus, even if MetroPCS could find a technically feasible method of deploying its A Block spectrum in even a portion of the Market, its service would be patchwork at best, which would almost certainly lead to considerable consumer confusion and dissatisfaction. Customers would be forced to contend with inconsistent service in different portions of *the same market*, which will undoubtedly lead to frustration. Forcing MetroPCS to deploy a scattered and non-contiguous network, while at the same time diverting resources to increase capacity on its existing systems, makes little sense, and in fact is contrary to the public interest and is best avoided by granting the relief requested herein.

To address this problematic Channel 51 interference situation, MetroPCS engaged NBC affiliate WJAR, which is owned by Media General, in talks concerning potential interference mitigation measures as well as voluntary relocation. In November 2011 and June 2012, MetroPCS paid for and conducted two separate engineering studies aimed at locating alternate channels for WJAR. Among feasible channel options, those studies located one potential non-interfering channel (VHF Channel 7) that would possibly have minimal impact to WJAR's existing Channel 51 footprint. However, WJAR informed MetroPCS that a move to Channel 7 was impractical and that it was not interested in relocating. In addition, while WJAR has not expressly indicated so, a number of other 700 MHz A Block licensees have expressed concerns that Channel 51 broadcasters fear they may be leaving potentially lucrative future incentive auction revenues on the table if they agree to voluntarily relocate from Channel 51 at this time.[7] Whether the reason is related to technical issues or potential incentive auction revenues, the result is the same – WJAR, like many Channel 51 licensees, is not willing voluntarily relocate. Accordingly, MetroPCS is left with gaping holes in its potential coverage area in the area in which it has the greatest need – the urban core. As is discussed in greater detail below, the inability to serve key portions of the market is coupled with an underdeveloped 700 MHz A Block equipment market. These two factors conspire to make the use of the MetroPCS License impossible to justify from a business and technical perspective.

MetroPCS also has expended significant time and resources engaging in a number of in-house engineering studies aimed exploring other engineering solutions to Channel 51 interference issues. MetroPCS' Chief Technology Officer, Malcolm M. Lorang, has led the Channel 51 engineering study process and has worked diligently with MetroPCS vendors towards solutions. However, there remain considerable practical, engineering and business challenges to providing a MetroPCS 700 MHz footprint complementary to the current MetroPCS footprint in the Market. Given the strong output signal from WJAR (1 megawatt), the base station receivers configured to match the MetroPCS footprint are likely to become saturated by the WJAR signal. In addition, there also are concerns relating to customer handset-to-Channel 51 television receiver interference that must be taken into consideration. MetroPCS currently is in the process of conducting field tests, and has invited WJAR's participation, to determine the levels of interference that result from WJAR across the geography in the Market.

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[7] Reply Comments of Vulcan Wireless LLC, RM-11626, 3-5 (filed May 12, 2011); *see also* Joint Comments in Opposition by Cavalier Wireless, LLC and Continuum 700 LLC, MB Docket No. 11-54, RM-11624, 4-5 (filed May 4, 2011); Reply Comments of United States Cellular Corporation, RM-11626, 5-7 (filed May 12, 2011).

MetroPCS also has been proactive in seeking other solutions to the Channel 51 issues within the available constraints. For example, MetroPCS has considered whether any of the Commission's technical rules could be revised or waived in lieu of tolling the 700 MHz buildout requirements, but has concluded that such a solution is not feasible at this time. Although, theoretically, the Commission could mandate that Channel 51 broadcasters such as WJAR have extremely tight filters, given the substantial 1 megawatt power of WJAR, such a solution winds up being insufficient, and has yet to be proven in the field. Furthermore, MetroPCS has determined that even the best filters and other base station interference rejection techniques available in the market would still result in substantial Channel 51 interference, as it is effectively impossible to completely mitigate the interference issues associated with Channel 51. Moreover, without a Commission mandate, which could require significant time to promulgate, the Channel 51 licensee has no incentive to cooperate. Theoretically, Channel 51 licensees also could agree to move their signals towards the lower end of the band, but this would necessitate changing the Channel 51 centering frequency, and further study is required to determine if this solution is even viable or technically feasible in the near term. MetroPCS has also collaborated with the 3GPP standards body in an effort to develop a 1 MHz guardband on the lower portion of the A Block, but this would require giving up a meaningful portion of MetroPCS' licensed spectrum, meaning that the useable LTE capacity of this spectrum would be reduced.

Even as MetroPCS has sought technical solutions and pursued voluntary negotiations with Media General and WJAR, other external factors beyond the control of MetroPCS have further hampered the efforts of MetroPCS to roll out a commercially viable lower band 700 MHz A Block service. MetroPCS purchased the MetroPCS License with the reasonable expectation that mobile units operating on the lower 700 MHz A block would be interoperable with the other

700 MHz blocks (B Block and C Block), as was the case in all previously auctioned bands (e.g., PCS and AWS). However, *after the auction*, events occurred that indicated this would not be the case. A boutique band class (Band Class 17) was created by the standards body covering only the Lower 700 MHz B and C Blocks. As a result of this balkanization of the lower 700 MHz Block, the market for A Block equipment has been extremely slow to develop. To the extent equipment is available, it is expensive due to lack of scale.

In order to deploy A Block-capable handsets across its entire handset line in an cost-competitive fashion, MetroPCS must get the benefit of economies of scale to lower the cost of each individual handset to reasonable levels.[8] Based on MetroPCS' interaction with equipment vendors, getting Band 12 chips into handsets in a cost-competitive manner is difficult. The handsets made for use over AT&T's 700 MHz spectrum will not support Band 12, and Verizon's initial LTE deployments have focused on the Upper C Block. In addition, Verizon has announced plans to divest the entirety of its A Block spectrum, thus removing an important scale player from the A Block equipment ecosystem at the very time Verizon's demand for this equipment could have driven the market.[9] Due to lower demand and Verizon's announcement earlier this year that it was willing to divert its 700 MHz A Block holdings to garner approval of its SpectrumCo transaction, the majority of handset manufacturers have not devoted their time and attention to developing Band 12-capable handsets that will allow operation on MetroPCS 700's A Block license. MetroPCS has actively engaged equipment manufacturers seeking a

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[8] Since the 700 MHz spectrum could be an important capacity increase means for MetroPCS, it would be required to sell <u>every</u> handset with this compatibility driving up costs for <u>all</u> handsets.

[9] *See* "Verizon Wireless to Conduct Spectrum License Sale," Press Release (Apr. 18, 2012), *available at* http://newscenter.verizon.com/press-releases/verizon-wireless/2012/verizon-wireless-to-conduct.html.

Band 12 handset solution, but has had disappointing results. MetroPCS commonly hears from equipment vendors that adding the necessary capability to handsets to enable 700 MHz A Block compatibility will increase costs, disrupt handset form factor, lengthen production schedules and create additional engineering issues, including possible reduced performance in other operating bands.

In order for deployment of the 700 MHz spectrum to make economic sense, MetroPCS must ensure that a significant number of customers are able to use the spectrum – otherwise it will simply lie fallow, constructed but un- or under-used. MetroPCS plans to deploy LTE over its 700 MHz spectrum, and faces a significant challenge in deploying 700 MHz A Block-capable handsets across most, or all, of its LTE handset line. This is not only true of MetroPCS customers in the Market, but of MetroPCS customers generally, who must be able to roam on the 700 MHz spectrum in order to most fully and efficiently use the spectrum. In addition, adding a Band 12 capability into a MetroPCS handset may have the perverse result of actually limiting MetroPCS customers' ability to roam on the LTE networks of certain nationwide carriers.

As a non-nationwide carrier that only operates in selected major metropolitan areas across the United States, national roaming is a key factor to MetroPCS in its service plan. MetroPCS is a member of the Competitive Carriers Association ("CCA"),[10] an industry group that has been a staunch advocate for interoperability on behalf of its many impacted members. CCA has filed with the Commission a Petition for Extension of Time (the "CCA Petition") on behalf of all Lower 700 MHz A Block licensees, which sets forth the arguments favoring a blanket extension of the A Block build-out timelines until two years after the interoperability situation in the Lower 700 MHz Band has been resolved. MetroPCS strongly supports an

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[10] CCA was formerly known as the Rural Cellular Association, or RCA.

extension on these grounds, and incorporates here by reference the CCA Petition and all legal and policy arguments made therein in support of the relief that MetroPCS seeks here.

III. AN EXTENSION OR WAIVER OF THE MID-TERM CONSTRUCTION DEADLINE IS JUSTIFIED

The facts set forth above justify an extension of the June 13, 2013, interim construction deadline on multiple grounds, any one of which, standing alone, would be sufficient to support the relief requested. Section 1.946(e) of the FCC rules allows a licensee to request an extension of a construction or coverage requirement prior to the deadline, and provides that requests may be granted if the inability to meet the deadline is due to causes beyond the licensee's control. And, Section 1.925 of the FCC rules empowers the Commission to waive specific requirements of the rules upon request if (a) the underlying purpose of the rule would not be served or would be frustrated by the application of the rule, and a waiver would serve the public interest; or (b) unique or unusual circumstances are presented such that it would be inequitable, unduly burdensome or contrary to the public interest to enforce the rule, and the applicant has no reasonable alternative. These provisions, as applied in the governing case law precedents, justify the relief that MetroPCS is seeking.

A. Causes Beyond the Licensee's Control Justify the Requested Relief

MetroPCS has no choice but to comply with the interference standards that are set forth in the FCC rules, and there is no regulatory requirement that the Channel 51 licensee Media General relocate to another channel, discontinue its operations in the Market or accept other interference mitigating measures. These facts, coupled with the unfortunate circumstance that 30 percent of the geographic area and approximately 80 percent of the population in the Market falls within the Channel 51 interference exclusion zone, means that MetroPCS is effectively precluded from satisfying the construction standard in any meaningful or commercially viable way unless it receives the cooperation of a third party over which it has no control and which has not to date shown any willingness to cooperate. While MetroPCS continues to search for engineering alternatives, none have yet been found and MetroPCS has no assurance that Media General will accept any technical alternative that might emerge.

Similarly, the entire interoperability problem has been exacerbated by third parties that are beyond MetroPCS' control. The standard setting body came up with the Band Class 17 classification that has balkanized the 700 MHz band, and AT&T and Verizon have seized upon it to encourage manufacturers to produce non-interoperable units, thus depriving Block A carriers of the benefits of scale necessary to spur the timely production of affordable units. All of these are actions that a regional carrier such as MetroPCS has no ability to alter on its own.

In sum, MetroPCS' unenviable position of having the populated core of its A Block licensed area enveloped within the Channel 51 exclusion zone and the substantial interoperability and equipment availability obstacles MetroPCS faces as a 700 MHz A Block licensee, justify the requested relief because MetroPCS has no ability to alter these situations on its own.

B. The Underlying Purpose of the Rule Will Not Be Eviscerated

The purpose of the construction rule was to encourage build-out and prevent carriers from warehousing scarce spectrum. The substantial public service record of MetroPCS clearly indicates that MetroPCS is devoted to providing service to the public. Indeed, past performance indicates that MetroPCS typically is an industry leader when it comes to developing new spectrum promptly. For example, MetroPCS was a prime mover in promptly clearing and developing the AWS spectrum it acquired in Auction 66. MetroPCS is also a leader in efficient operation, as it was the first carrier to deploy LTE commercially. Further, in each of its major metropolitan areas where it has been operating for several years, it is the most efficient user of spectrum. The simple truth is that MetroPCS bought the 700 MHz spectrum in the hope of using it to meet present needs for service to complement the limited 5 x 5 MHz of AWS spectrum currently deployed in the Market, and circumstances beyond MetroPCS' control are limiting its ability to use the spectrum. This is not a situation where a carrier has acquired spectrum that it is able to utilize and has made a tactical, economic or strategic business decision to delay system implementation. As noted above, the failure to construct is due to external factors that MetroPCS could not control.

In fact, failing to grant the extension would actually undermine the purpose of the rule. The substantial existing infrastructure that MetroPCS has in service in the Market puts MetroPCS in the best possible position to initiate service to the public promptly if and when the Channel 51 interference problem is solved. Shortening the license term or recapturing some or all of the Market area would actually increase the prospect that the provision of beneficial services to the public likely would be delayed, not accelerated, by denying the requested relief. Further, it is not clear that any other licensee would have an easier time, or find it economically reasonable, to build out only in the sparsely populated areas with no hope of building in the more populated areas.

C. Special Circumstances Exist that Justify a Waiver

There are certain unique and unusual circumstances presented here that would render it fundamentally unfair to strictly enforce the interim construction deadline against MetroPCS. Specifically, the Commission has itself taken actions that have served to complicate the efforts of 700 MHz A Block licensees to construct and operate commercially viable systems. First, the Commission continued to accept and process Channel 51 applications for more than two years after Auction 73, which served to exacerbate the Channel 51 interference problem. Second, while the Commission has been pondering the interoperability problem for an extended period of time, it has taken no concrete action to resolve the issue. Third, Congress,[11] and now the Commission, has developed and is moving forward with an incentive auction program involving TV broadcasters which holds promise in the long term of freeing up additional spectrum for broadband usage but, in the short term, appears to have reduced the incentive of Channel 51 operators to enter into voluntary agreements with A Block licensees.[12] The impact of these actions is discussed in greater detail below.

In the case of the Market, no new or additional Channel 51 operations were licensed subsequent to Auction 73. Nevertheless, the continued licensing of Channel 51 stations exacerbated the interference problems and increased the number of markets that were adversely affected nationwide. This has slowed the development of the Block A spectrum. This fact, coupled with the interoperability problem, has slowed the development of equipment and increased the cost of equipment by reducing the scale of the early market.

With respect to interoperability, this issue was first raised publicly in a petition filed with the Commission on September 29, 2009,[13] and remains unresolved. The fact that the interoperability issue is "in play" has had the unfortunate effect of discouraging manufacturers from proceeding as fast as expected with the development and sale of lower A Block 700 MHz

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[11] *See* Title VI of the Middle Class Tax Relief and Job Creation Act of 2012, codified at 47 U.S.C. Section 309(j) (8)(G).

[12] Although there is some hope that the incentive auction may eventually eliminate the Channel 51 interference problem if Channel 51 is repacked and moved from its current location, the incentive auction is tentatively scheduled for 2014 at the earliest – long past the mid-term construction benchmark that A Block licensees are currently subject to.

[13] *See Petition for Rulemaking Regarding the Need for 700 MHz Mobile Equipment to Be Capable of Operating on All Paired Commercial 700 MHz Frequency Blocks*, Petition for Rulemaking, RM-11592 (filed Sep. 29, 2009).

equipment. Further, Verizon's announced intent to sell its Block A spectrum in early 2012 has been another unforeseen circumstance beyond MetroPCS' control, which has further exacerbated the issues plaguing the A Block. Finally, it was inconceivable at the time of Auction 73 that the Commission would continue to license and allow modifications to Channel 51 stations given the demand for services and the demonstrated demand for spectrum.

Incentive auctions were recommended by the Commission in the 2010 *National Broadband Plan.*[14] This action alone gave the broadcasters initial notice that they may be able to receive more money if they did not relocate. The first step in the process was to secure authority from Congress to conduct such auctions, which occurred with the passage of the Spectrum Act in 2012. This led to the Commission's issuance of a *Notice of Proposed Rulemaking*[15] in which it outlined its intent to hold a broadcast incentive auction in 2014. Through this auction, the Commission plans to offer to licensees of full power Class A television stations the ability to return some or all of their broadcast spectrum for repacking and auction for commercial mobile wireless use, in exchange for a share of the auction proceeds. While this series of actions is laudable, one unintended consequence is that some Channel 51 broadcasters, faced with the prospect of monetizing their existing spectrum by taking advantage of the new incentive auction proposal, may have adopted a "wait and see" attitude with respect to voluntary relocation negotiations with A Block licensees. The record in the Commission's Channel 51 proceeding demonstrates that "the potential for Channel 51 broadcasters to receive future incentive auction payments has made it much more difficult, if not impossible, for A Block licensees to enter into

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[14] MetroPCS wholeheartedly supports the Commission's efforts to free up additional spectrum and the spectrum goals of the National Broadband Plan.

[15] *Expanding the Economic Opportunities Of Spectrum Through Incentive Auctions*, Notice of Proposed Rulemaking, Docket No. 12-268, FCC 12-118 (rel. Oct. 2, 2012).

voluntary relocation agreements with Channel 51 broadcasters."[16] Industry stakeholders have sounded a common theme that the upcoming incentive auction has "had the unintended effect of incentivizing broadcasters to act in ways that . . . make it more difficult for LTE Band 12 operators to relocate interfering Channel 51 broadcasters."[17] As detailed above, while MetroPCS made efforts to reach an agreement with Media General, no agreement has yet been reached. MetroPCS thus shares the concern that the prospects for voluntary relocation of Channel 51 broadcasters have been reduced due to the incentive auction proposal. In effect, the interference resolution process has been distorted in a manner never envisioned by the Commission or MetroPCS as the A Block licensee.

D. The Relief Requested is Consistent with Commission Precedent

Precedent indicates that the Commission has granted licensees relief from construction obligations in situations similar to those that now face MetroPCS. As is discussed in greater detail below, the Commission has extended construction deadlines where equipment was unexpectedly unavailable, where equipment was unaffordably expensive, and where interference concerns curtailed the reasonable prospects for deployment over the impacted band. Each of these issues is present today in the A Block, making the extension of A Block construction deadlines warranted and fully consistent with Commission precedent.

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[16] Letter from Michele C. Farquhar to Marlene H. Dortch, Secretary, RM-116262, at 2 (filed Jun. 21, 2011).

[17] United States Cellular Reply Comments, RM-11626, at 5 (filed May 12, 2011). In fact, MetroPCS is aware of a circumstance where a broadcaster who had sought *and obtained* Commission consent to relocate from Channel 51 to Channel 31 later sought permission to remain at Channel 51, presumably in an attempt to capitalize on the uniquely powerful position that Channel 51 licensees occupy. *See* Petition for Rulemaking of Southereastern Media Holdings, Inc., MB Docket No. 11-54, RM-11624 (filed Feb. 25, 2011).

As demonstrated above, Lower A Block licensees will be unable to procure cost-effective equipment that can provide a ubiquitous, interference-free mobile broadband service due to interoperability issues. The Commission previously has found that the inability of the licensee to procure appropriate equipment is beyond the control of the licensee, and therefore the requested relief is warranted. For example, in 2004, the Commission found that it was "not reasonable to fault licensees who obtained licenses and then faced unexpected" unavailability of equipment.[18] As a result of the "scarce" equipment that "faced technical and economic challenges," the Commission found that an extension of the construction deadlines for 220 MHz licensees was warranted.[19] Similarly, in 2008, Local Multipoint Distribution Service ("LMDS") licensees also "faced factors beyond their control, including difficulties in obtaining viable, affordable equipment" by the construction deadline, and their waiver was granted as a result.[20] Most

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[18] Request of Warren C. Havens for Waiver or Extension of The Five-Year Construction Requirement for 220 MHz Service Phase II Economic Area and Regional Licensees, *Memorandum Opinion and Order*, 19 FCC Rcd 12994, ¶ 15 (2004) (*"220 MHz Extension Order*).

[19] *Id.* at ¶ 16.

[20] *Applications Filed by Licensees in the Local Multipoint Distribution Service*, Memorandum Opinion and Order, 23 FCC Rcd 5894, ¶ 25 (WTB 2008) ("*LMDS Extension Order*"). The circumstances faced by A Block licensees is nearly identical to that faced by the providers who were granted relief in the *LMDS Extension Order*, and entirely distinguishable from the Commission's recent decision in the *T-Mobile LMDS Order*. *T-Mobile Licensee, LLC Requests for Extension of Time, or in the alternative, Limited Waiver of Substantial Service Requirements for 16 Local Multipoint Distribution Service Licenses*, Memorandum Opinion and Order, DA 12-1608 (rel. Oct. 10, 2012) ("*T-Mobile LMDS Order*"). T-Mobile was one of the licensees that initially received an extension in the *LMDS Extension Order* because all of the LMDS licensees faced circumstances, like equipment constraints, that were beyond their control. *Id.* at ¶¶ 5-6. In the *T-Mobile LMDS Order*, however, T-Mobile argued that it should be granted an additional extension because market conditions did not turn LMDS into an alternative backhaul technology and because T-Mobile spent nine months seeking regulatory approval for a transaction with AT&T, which caused it to put LMDS development on hold. *Id.* at ¶ 7. The Commission noted that other LMDS licensees were able to meet the build-out deadline and did not need another extension. *Id.* at ¶ 11. The Commission determined that the factors T-Mobile cited as reasons

recently, in 2010, the Commission found that an extension of build-out requirements was justified in the event that necessary devices or equipment was largely unavailable, as the lack of this availability was a circumstance outside the control of the licensee.[21] Not unlike these three situations, the market for Lower 700 MHz A Block devices also has not developed as anticipated, changes in the market and changes in the holdings of the larger carriers, and the lack of broad availability of these necessary devices make deployment economically infeasible.

Commission precedent also supports an extension of performance benchmarks in cases where restrictive interference protections must be incorporated into construction. In 2006, the WCS Coalition was granted a three-year extension "due to the uncertainty regarding the rules governing the operation of adjacent band SDARS [Satellite Digital Audio Radio Service] terrestrial repeater and the degree to which WCS operations will be protected from harmful interference."[22] Consistent with the arguments presented here today by MetroPCS, the WCS Coalition argued that this regulatory uncertainty hindered its ability to satisfy the necessary steps to fully deploy its network – i.e., equipment development, network design and facility

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for an extension were business decisions within T-Mobile's control, and "therefore, not an appropriate basis for regulatory relief." *Id.* at ¶¶ 10-13. However, the hurdles faced by A Block licensees are not business decisions at all, but unforeseen factors – like continued Channel 51 interference and equipment unavailability – that are entirely beyond their control. Just like the original LMDS licensees, A Block licensees face "difficulties in procuring the basic equipment necessary for LMDS operations . . . stemming from the state of the market." *Id.* at ¶ 6. To be sure, unlike the circumstances surrounding the *T-Mobile LMDS Order*, the spectrum-constrained A Block licensees would love the option to make a "business decision" to promptly deploy an unencumbered A Block for the benefit of their customers.

[21] *Request of Ten Licensees of 191 Licenses in the Multichannel Video and Data Distribution Service for Waiver of the Five-Year Deadline for Providing Substantial Service*, Order, 25 FCC Rcd 10097 (WTB 2010).

[22] *Consolidated Request of the WCS Coalition for Limited Waiver of Construction Deadline*, Order, 21 FCC Rcd 14134, ¶ 5 (2006) ("*WCS Extension Order*").

deployment.[23] Similarly, if required to meet the June 13, 2013 construction benchmark, the Lower A Block licensees will be required to deploy their networks under strict technical specifications to reduce the potential for interference with Channel 51. Such technical restraints will ultimately hinder the ability of MetroPCS to effectively develop its network, and will result in limited deployment.

The Commission also found an extension of construction timelines was warranted in a situation where related rulemaking proceedings were pending before the Commission. In 1997, the Commission provided a blanket extension for Interactive Video and Data Service ("IVDS") authorizations pursuant to its intent to initiate a rulemaking to consider significant revisions to the IVDS rules.[24] The Commission believed that it would not be in the public interest to require licensees to comply with rules that were currently under Commission review.[25] Again in 2001, the Commission granted an extension of build-out requirements for Multipoint Distribution Service ("MDS") BTA authorizations because, concurrent with the build-out deadline, the Commission also implemented service rule changes that granted MDS licensees the authority to offer new and innovative broadband services, instead of the anticipated video programming services.[26] As a result of these modifications the Commission extended the MDS construction deadline not only in 2001, but again in 2003 due to the substantial revision in MDS rules and the impact that it would have on the MDS construction.

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[23] *Id.*

[24] Requests by Interactive Video and Data Service Auction Winners to Waive the January 18, 1998, and February 28, 1998, Construction Deadlines, *Order*, 13 FCC Rcd 756, 758 (WTB 1998).

[25] *Id.*

[26] Extension of the Five-Year Build-Out Period for BTA Authorization Holders in the Multipoint Distribution Service, *Memorandum Opinion and Order*, 16 FCC Rcd 12593 (MMB 2001).

The Commission should apply this same rationale in the current situation. Although the Commission has initiated rulemakings on resolving the 700 MHz interoperability issue,[27] it is highly unlikely, if not impossible, that the Commission will complete this rulemaking in time for MetroPCS to gain access to, test and launch devices to operate on its A Block spectrum by the build-out deadline of June 13, 2013. The same holds true for the Channel 51 interference issues which are inextricably intertwined with a number of proceedings, including the pending incentive auction *NPRM*.

IV. CONCLUSION

This application demonstrates both the industry-wide issues with the A Block, and the unique issues that MetroPCS faces in the Market. The substantial encumbrance of the MetroPCS License contour by the Channel 51 interference exclusion zone, the lack of economies of scale in the equipment market, the lack of cost-competitive interoperable equipment, the uncertain voluntary relocation talks with WJAR, and the lack of any viable engineering solutions make it both economically impracticable and technically infeasible for MetroPCS to meet its construction obligations under the current market conditions. Accordingly, for good cause shown, MetroPCS requests a waiver of the construction/coverage requirements set forth in 47 C.F.R. § 27.14(g)(1), consistent with the requests made in herein, and any other such relief as the Commission may deem proper.

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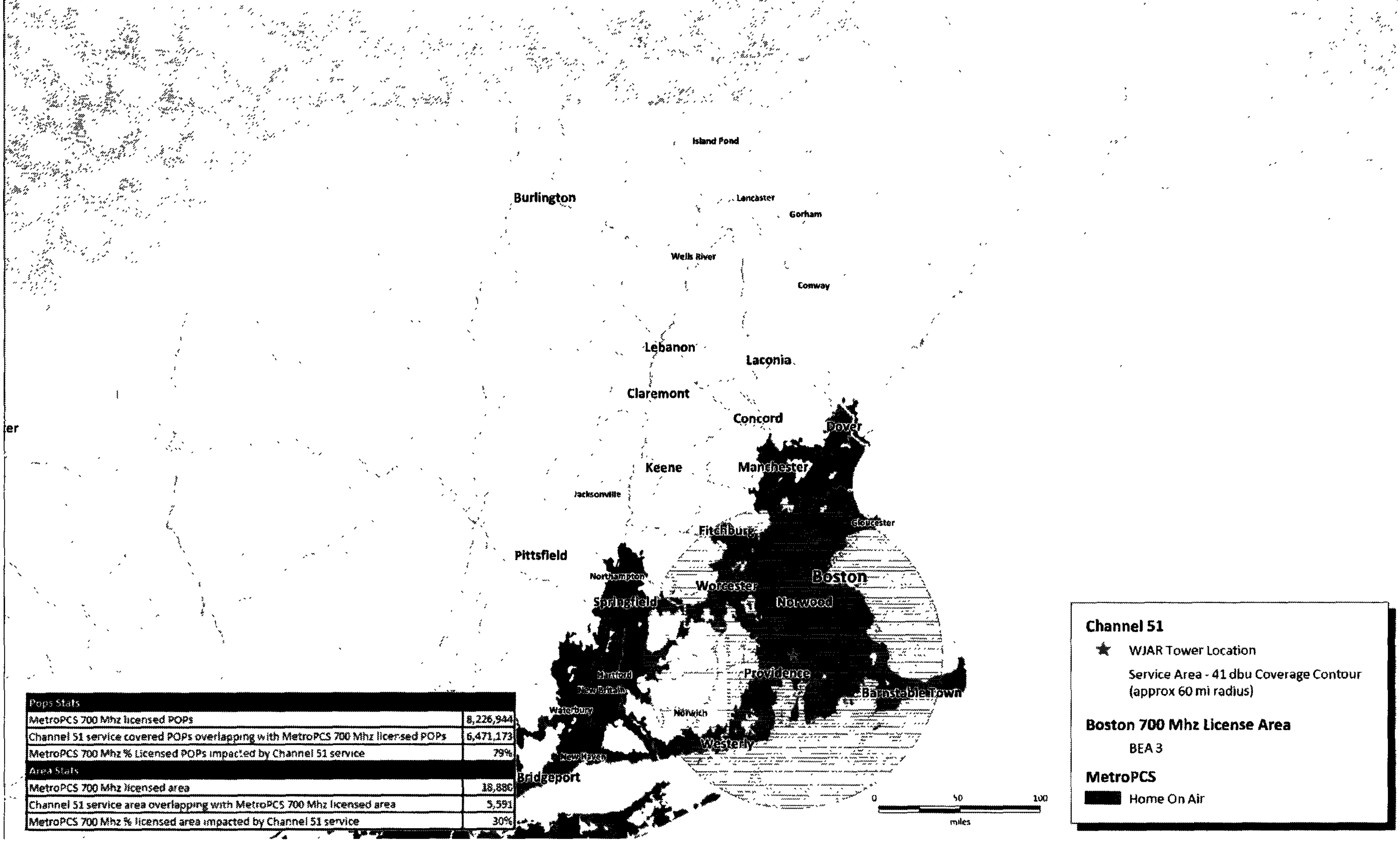
[27] *Promoting Interoperability in the 700 MHz Commercial Spectrum; Interoperability of Mobile User Equipment Across Paired Commercial Spectrum Blocks in the 700 MHz Band*, Notice of Proposed Rulemaking, FCC 12-31, WT Docket No. 12-69, RM-11592 (terminated) (rel. Mar. 21, 2012).

ATTACHMENT 1

MetroPCS Boston Market: 700 Mhz License Area and Channel 51 Station



Pops Stats	
MetroPCS 700 Mhz licensed POPs	8,226,944
Channel 51 service covered POPs overlapping with MetroPCS 700 Mhz licensed POPs	6,471,173
MetroPCS 700 Mhz % Licensed POPs impacted by Channel 51 service	79%
Area Stats	
MetroPCS 700 Mhz licensed area	18,880
Channel 51 service area overlapping with MetroPCS 700 Mhz licensed area	5,591
MetroPCS 700 Mhz % licensed area impacted by Channel 51 service	30%